

A091 (Rev. 8/01) Criminal Complaint

United States Courts  
Southern District of Texas  
FILED

MAY 13 2017

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

V.

Salvador ORTIZ Jr.  
Jesus HERNANDEZ

## CRIMINAL COMPLAINT

Case Number: 2:17mj489

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about May 12, 2017 in Brooks County, in the

(Date)

Southern District of Texas defendant, **Salvador ORTIZ Jr.**  
**Jesus HERNANDEZ**

each aiding, abetting and assisting one another, did knowingly or in a reckless disregard of the fact that an alien had come to, entered, or remained in the United States in violation of law, transport, or move or attempt to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law

in violation of Title 8 United States Code, Section(s) 1324.  
I further state that I am a(n) Border Patrol Agent and that this complaint is based on the  
following facts:  
Official Title

See Attached Affidavit of U.S. Border Patrol Agent

**Eberto Cabello**

Continued on the attached sheet and made a part of this complaint:

☒ Yes ☐ No

Submitted by reliable electronic means, sworn to, signature  
attested telephonically per Fed.R.Crim.P.4.1, and probable cause  
found on the:

May 13, 2017

Date

B. Janice Ellington U.S. Magistrate Judge

Name and Title of Judicial Officer

Signature of Complainant

**Eberto Cabello**

Printed Name of Complainant

at

Corpus Christi, Texas

City and State

Signature of Judicial Officer

## AFFIDAVIT

The information contained in this report/affidavit is based upon my personal participation in the investigation, which included, but is not limited to information relayed to me by other agents and officers participating in the investigation.

### **FACTS/PROBABLE CAUSE:**

On May 12, 2017, Border Patrol Agent R. Cortez, herein BPA Cortez, was assigned checkpoint duties at the United States Border Patrol Checkpoint located near Falfurrias, Texas. BPA D. Tista and his canine partner (Elvis) were assigned to assist the primary agent. At approximately 7:00 A.M., a 2010 Lincoln MKZ approached the primary lane for an immigration inspection with three occupants.

When the vehicle came to a stop, the driver, (later identified as Salvador Ortiz Jr., herein ORTIZ) rolled down the front driver side window. BPA Cortez greeted ORTIZ and inquired as to his destination, ORTIZ stated they were all headed to Dallas, Texas to visit an aunt. BPA Tista was simultaneously conducting a non-intrusive free air sniff of the exterior of the vehicle with his canine partner. BPA Tista immediately advised BPA Cortez that his canine had alerted to the trunk of the vehicle. BPA Cortez informed ORTIZ that a canine was alerting to his vehicle, he asked for and obtained consent to search the trunk from ORTIZ. ORTIZ released the trunk locking mechanism and remained in the vehicle. BPA Tista opened the trunk lid and found the trunk to be full of luggage and other items to include a large ice chest. BPA Cortez referred ORTIZ to the secondary inspection area for a thorough search of the trunk and complete the inspection. Once in the secondary inspection area, the three occupants, (ORTIZ, Jesus HERNANDEZ and ORTIZ's minor son) were asked to exit the vehicle. Immediately after exiting the vehicle and in an exited utterance, ORTIZ told BPA Tista that there possibly was one person hiding in the trunk.

Salvador ORTIZ, Jesus HERNANDEZ, and ORTIZ's minor soon were escorted into the checkpoint while BPA Garza proceeded with the search. BPA Garza opened the trunk and found a male person hidden behind the luggage up against the backside of the back row seat. The male was identified as Jose Santos Sustaita-Davila, a self-admitted Mexican national without authorization to be, pass through or remain in the United States and admitted to illegally crossing the international boundary without being inspected by immigration officer at a designated Port of Entry.

Salvador ORTIZ and Jesus Hernandez were placed under arrest for attempting to smuggle, move or transport an undocumented alien in furtherance of his illegal presence in the United States in violation of law. Salvador ORTIZ's minor son was released to his mother.

### **STATEMENT BY DEFENDANT:**

Salvador ORTIZ Jr. and Jesus Hernandez were advised of their Miranda Rights and Warnings in their language of preference, per Service Form CBP I-214 by Border Patrol Agents. Both defendants signed the form indicating they read, understood their rights and were willing to provide a statement without an attorney present. Sworn statements were video recorded.

Salvador ORTIZ Jr stated the reason for traveling through the Falfurrias Border Patrol checkpoint was specifically to smuggle one undocumented alien to Austin, Texas in exchange for \$1,000.00 USD. Salvador ORTIZ Jr. stated that the undocumented alien, later identified as Jose Santos SUSTAITA-Davila, was dropped off at his house in Alton, Texas by a friend of his. ORTIZ Jr. claims that once his friend left the alien at his home, he decided to go and stay at the Budget Inn Motel in Edinburg, Texas for the night. ORTIZ Jr claimed that only SUSTAITA-Davila and he stayed in the room. ORTIZ Jr stated that he told SUSTAITA-Davila to get into the trunk of his car at about 5:00 a.m. for the trip. ORTIZ Jr. claimed his son and Jesus HERNANDEZ were dropped off at the motel early the next day and did not know anything about the smuggling attempt.

Jesus HERNANDEZ initially claimed he did not have knowledge of the smuggling attempt but recanted and admitted to knowing of the alien. He further claimed ORTIZ Jr. was the person in charge of the smuggling arrangements. HERNANDEZ claimed to not have financial gain and his only involvement was helping ORTIZ Jr. drive.

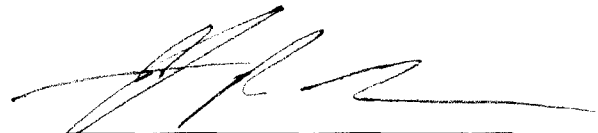
**MATERIAL WITNESS STATEMENTS:**

Jose Santos Sustaita-Davila was interviewed and provided the following information in video recorded interview:

Sustaita-Davila stated that he made arrangements with a friend of his to be smuggled into the United States. Sustaita-Davila stated he paid approximately \$2,500.00 USD to be smuggled to Austin, Texas. Sustaita-Davila stated that after illegally crossing into the United States, he was taken to a house where he met Salvador ORTIZ Jr. He and two other males, later identified as ORTIZ's minor son and Jesus HERNANDEZ, took him to a nearby motel where they all stayed overnight. Sustaita-Davila claimed Salvador ORTIZ JR, his minor son and Jesus HERNANDEZ were near the vehicle when ORTIZ Jr. instructed him to get into the trunk. Sustaita-Davila was shown a photo-lineup and was able to identify both Salvador ORTIZ Jr and Jesus HERNANDEZ as the individuals that attempted to smuggle him.

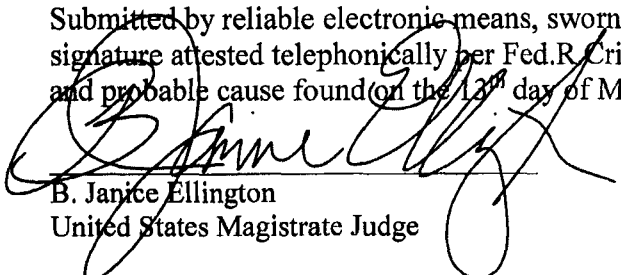
**DISPOSITION:**

The facts of this case were presented to Assistant United States Attorney J. Miller who accepted prosecution on Salvador ORTIZ Jr. and Jesus Hernandez for violating Title 8 USC 1324, alien smuggling. Jose Santos Sustaita- Davila was held as material witnesses in this case.



Eberto R. Cabello  
Border Patrol Agent

Submitted by reliable electronic means, sworn to,  
signature attested telephonically per Fed.R.Crim.P.4.1,  
and probable cause found on the 13<sup>th</sup> day of May, 2017



B. Janice Ellington  
United States Magistrate Judge